

REMARKS

The Office Action dated November 19, 2008 has been received and carefully noted. The above amendments to the claim, and the following remarks, are submitted as a full and complete response thereto.

Claim 1 has been amended to more particularly point out and distinctly claim the subject matter of the invention. No new matter has been added. Claims 1, 5, and 16-19 are respectfully submitted for consideration.

Claims 1, 5, and 16-19 were rejected under 35 USC § 112, second paragraph, as being indefinite. The Office Action took the position that the recitation in claim 1 regarding “the tree retaining member is connected to the base”, is confusing in light of lines 6-11 of page 14 of the specification. Additionally, the Office Action objected to the phrase such as “screws, bolts, or the like”, as appearing in claim 1.

Applicant respectfully submits that claim 1 is in compliance with U.S. patent practice. With respect to the disclosure on lines 6-11 of page 14 of the specification, applicant respectfully submits that this section of the specification makes it clear that there is a connection between the tree retaining member and the base. Lines 14-16 of page 14 clearly explains that tree retaining member 6 comprises an aperture 8 located at the connection between the retaining member 6 and the base 10. It is respectfully submitted, therefore, that this section of claim 1 is clear, accurate, and fully supported by the specification.

Regarding the objection to the terminology of “such as screws, bolts or the like”, this phrase has been amended to more particularly point out and distinctly claim the subject matter of the invention. No new matter has been added, and no issues are raised, which require further consideration and/or search. It is respectfully submitted that the claims are in compliance with U.S. patent practice.

Claims 1, 5, and 16-19 were rejected under 35 USC 102(b) as being anticipated by Graves (U.S. Patent No. 5,482,245). Applicant respectfully submits that claims 1, 5, and 16-19 recite subject matter neither disclosed nor suggested in Graves.

Independent claim 1, upon which claims 5 and 16-19 are directly or indirectly dependent, is directed to a tree stand comprising a fluid reservoir about a tree retaining member including a tree gripping means. The tree gripping means comprises projections. The fluid reservoir comprises a cylindrical or frustoconical member being closed at one end thereof by a base. The tree retaining member is connected to the base. The tree retaining member comprises a substantially cylindrical hollow member, and the tree gripping means comprises a plurality of projections arranged on the interior surface of the tree retaining member. The tree retaining member is adapted to retain a tree inserted therein without using any movable mechanical means in the form of screws or bolts, by resisting and lifting of a tree inserted therein relative to the tree stand. It is respectfully submitted that Graves fails to disclose or suggest the claimed invention.

As discussed in applicant's response of August 13, 2008, Graves discloses a tree and pole stand. The stand includes an outer container, and an inner container which is receivable by the outer container. A plurality of braces are connected to the outer container, to enable the outer container to be supported by an inner wall of a decorative container. The inner container includes a series of eye bolts to position the tree or pole within the container.

Applicant again submits that Graves cannot properly be considered to be comparable to the present invention. In addition to the distinctions which were discussed in applicant's previous response, it is respectfully submitted that the Office Action seems to erroneously equate eyebolt 76 of Graves to the tree gripping means of the present invention. However, the tree gripping means of the invention are disclosed and recited as not requiring moveable mechanical means in the form of screws or bolts. Graves requires the use of eyebolt 76. Claim 1, and therefore claims 5 and 16-19 dependent thereupon, must be considered to be novel over Graves.

As discussed in applicant's previous remarks, the eyebolts of Graves require a user to bend down or kneel at the stand and manually adjust them to grip the tree or pole which is being fit therein. According to the present invention, however, this type of manual bending and adjusting is not required. The fluid reservoir, tree retaining member, and tree gripping means of the present invention are such that a tree is retained without using any movable mechanical means.

The Office Action also seems to equate nail 84 of Graves as being adapted to retain a tree inserted into the tree retaining member. However, nail 84 cannot be interpreted as performing such a function in Graves. Column 1, lines 64-67 of Graves, as well as column 4, lines 38-67 thereof, describes that the tree plate on which nail 84 is welded rests within the tree retaining member. The tree plate of Graves, therefore, cannot be interpreted as resisting lifting of a tree inserted therein relative to the tree stand. The tree plate of Graves is described as being able to move freely up and down the tree retaining member. This movement is irrespective of whether it is inserted into a tree before or after the tree is inserted into the tree retaining member. Therefore, this aspect of Graves cannot be considered to be comparable to the present invention.

Claims 5 and 16-19 are dependent upon claim 1, and recite additional limitations thereupon. Therefore, for the same reasons that claim 1 is allowable, claims 5, and 16-19 should also be found allowable.

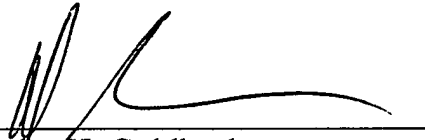
In view of the above, applicant respectfully but strongly submits that each of claims 1, 5, and 16-19 recite subject matter which is neither disclosed nor suggested in the cited prior art of Graves. Applicant submits that this subject matter is more than sufficient to render the claimed invention unobvious to an ordinary person skilled in the art. Applicant therefore respectfully requests that each of claims 1, 5 and 16-19 be found allowable, and this application passed to issue.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by

telephone, the applicants' undersigned representative at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not being timely filed, the applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Douglas H. Goldhush', written over a horizontal line.

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